IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 12983 of 2001

Between:

M. Prabhakara Rao S/o. M. Ranganna
R/o. Ashoknagar, Kurnool, Krunool District.

..... PETITIONER

AND

1 The A.P. State Seed Certification Agency, rep. by its Director,
5-10-193, 1st floor, HACA Bhavan, Hyderabd-500 004.
2 The Senior Seed CertificatION Officer Kurnool, Kurnool
District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records pertaining to the proceedings of the 1st Respondent in No.SCA/Estt/2911/2000 dated 30-12-2000 confirming the orders of the 2nd Respondent in ROC .No.Estt/SA/10/98-99 dated 22-8-1998 and quash the same as illegal, arbitrary and vague.

Counsel for the Petitioner: MR.K.V.CHALAPATHI RAO

Counsel for the Respondents: MR.A.TULSI RAJ GOKUL

The Court made the following:

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ORDER:

Challenging the proceedings of the first respondent in No.SCA/Estt/2911/2000, dated 30-12-2000 confirming the orders of the second respondent in ROC.No.Estt/SA/10/98-99 dated 22-08-1998 as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition is stated as follows:

The case of the petitioner, an attender in the respondents Seed Certification Agency, appointed vide proceedings
dated 16-11-1985, is that the second respondent issued a charge memo to him in Roc.No.SCA/SSCO-KNL/SA/27/95-96,
dated 24-06-1996 framing two charges calling upon him to submit his explanation within ten days. Thereupon, the petitioner addressed a letter dated 01-07-1996 requesting the second respondent to furnish a copy of the written statement of one V. Govinda Reddy, but the second respondent failed to do so. The petitioner submitted his explanation to the second respondent on 05-08-1996 requesting him to conduct an oral enquiry in Charge No.1. It is alleged that the second
respondent without conducting any enquiry, issued a
show cause notice, dated 30-09-1996 vide proceedings No.SCA/SSCO/KNL/SA/27/95-96 calling for the petitioner's explanation. After the petitioner submitting explanation, the second respondent by his proceedings dated 22-08-1998 dismissed the petitioner from service. Against the dismissal order, the petitioner filed an appeal before the first respondent, which was dismissed by his proceedings No.SCA/Estt/2911/2000 dated 30-12-2000 stating that the grounds stated for considering his request for reinstatement were examined and found not satisfactory and therefore his request for reinstatement is negatived. Aggrieved by the same, the present writ petition is filed.

The petitioner submits that the orders of the second respondent in removing him from service as confirmed by the first respondent are illegal and *ultra vires* of the Rules framed under APSSCA Employees Discipline and Appeal Regulations.

In the counter affidavit filed on behalf of the respondents, it is stated that on receipt of a complaint from M/s. Pravardhana Seeds on 2-8-1995 about substandard germination of cotton hybrid – Savitha Lot No. Jan'95-01-500(B)27500, the first respondent issued necessary instructions to the SSCO, Kurnool vide Memo No.SCA/QC/2176/95, dated 03-08-1985 to investigate the case thoroughly and submit a report, in which report dated 23-09-1995, it was established that the petitioner has indulged in a fictitious and unauthorized transaction in the aforesaid case and committed acts, amounting to grave misconduct and dereliction of duties as enumerated in Rule – 4, XXXVII of APSSCA Employees Discipline and Appeal Regulations, which is unbecoming of an employee of the agency. Further, the petitioner was found to have involved from the inception of the entire process of seed certification in respect of the complained seed lot for Rs.1,75,500/- by way of cheque in his name by M/s Pravardhana Seeds, which was en-cashed by the petitioner. Since the investigation disclosed involvement of the petitioner, he was charged with misconduct and dereliction of duties and definite charges were framed on the basis of the allegations against him.

It is further stated that the allegation of the petitioner that he was not furnished the statements of the seed grower and the seed company and other information is baseless in view of the fact that his explanation dated 05-08-1996 to the charge memo clearly discloses that the petitioner is in receipt of the complete information regarding the charges leveled against him. It is also not true that the request of the petitioner to conduct an oral enquiry was rejected, because as per Rule 8 (i) of the APSSCA Employees Discipline and Appeal Regulations, a questionnaire was appended to the charge memo instructing the petitioner to fill and submit along with his defence written statement, but the same was not submitted by the petitioner. It is further stated in the explanation of the petitioner to the show cause notice dated 30-09-1996 that the questionnaire form is not resubmitted as the same is omitted in the CC&A Rules of 1991, which indeed do not have any application to our agency.

It is also stated that the appellate authority, first respondent, after considering the grounds advanced by the petitioner and after coming to the conclusion that the petitioner has committed an offence, passed orders confirming the orders of the second respondent.

The learned counsel for the petitioner contended that when some more employees

are involved in the alleged incident, no joint enquiry has been conducted and therefore it caused prejudice to the writ petitioner and that the procedure for imposing major penalty as required under Rule-8 has not been followed by the respondents and no enquiry is conducted and no witness is examined and therefore the impugned proceedings are vitiated by not conducting enquiry and that the appellate authority has not applied its mind independently and therefore, both the impugned proceedings are illegal.

On the other hand, the learned standing counsel appearing for the respondents contended that the option was given to the delinquent employee for holding an oral enquiry or without oral enquiry and that has not been exercised by the writ petitioner and the order under challenge is complete in accordance with the Rules governing the service conditions of the writ petitioner and that after proper application of mind by the appellate authority, the order was passed. Since the other two employees do not come under the purview of the respondents and they being on deputation, the appropriate disciplinary authority has taken action and therefore, the question of joint enquiry does not arise and hence he prays to dismiss the writ petition.

The law is well settled that in every proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. In the decision making process, if the authority deciding the case has ignored vital evidence and thereby arrived at an erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the Constitutional power under Article 226 of the Constitution can be invoked to set aside such erroneous findings so as to prevent gross injustice to the party/complainant.

The charges levelled against the petitioner are as follows:

> "CHARGE I: M.Prabhakara Rao, Attender has managed to file filthy and ficticious application for registration of Form No.I in name of seed grower to the benefits of his illegal dealings and supported sales of seed much against the conduct rules as an employee speculating investment in the business embarrassing him in the discharge of his official duties.
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> CHARGE II: Misbehaviour and dereliction to duties:
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> In exercise of the powers conferred under Agency Employees discipline and Appeal rules, this charge is leveled against him, for his misbehaviour in engaging himself

directly in the business of selling the seed to a reputed firm in course of his official duties."

A Charge memo dated 24-06-1996 was issued to the petitioner and an explanation was sought for, for which the petitioner gave an explanation. As the explanation was not satisfactory, after considering the material available on record, a show cause notice dated 30-09-1996 was issued to the petitioner as to why he should not be removed from service.

The first contention raised by the learned counsel appearing for the petitioner is that Rule-12 of the Andhra Pradesh State Seed Certification Agency Employees Discipline and Appeal Regulations, 1977 (for short 'Regulations 1977') requires a joint enquiry, but no joint enquiry has been conducted and therefore, the enquiry proceedings are vitiated.

No doubt, Rule-12 of Regulations 1977 provides that where two or more employees are concerned in any case, the disciplinary authority (competent to impose a major penalty on all such employees) may make an order directing that disciplinary action against all of them may be taken in a common proceedings and specifying the authority which may function as the Enquiry Officer for the purpose of such proceedings.

It is the contention of the learned counsel for the respondents that the other two employees who involved in the episode are not the employees of the respondents and they were working under deputation and therefore, the competent authorities were directed to take appropriate action and accordingly the disciplinary authorities took action against the other two employees involved in the same incident.

One Sri B.Sadasiva Rao, Former Agricultural Officer on deputation with A.P.S.S.C.A. as Seed Certification Officer, Kurnool as Seed Certification Officer was dismissed from service by the disciplinary authority-Commissioner and Director of Agriculture, Hyderabad. Against the dismissal order, the said Sadasiva Rao, filed an appeal before the Government, wherein the punishment was modified with stoppage of three increments with cumulative effect. In the circumstances of the case, Rule-12 of Regulations 1977 has no application to the facts of the present case.

The other main contention raised by the learned counsel for the petitioner is that no enquiry is conducted, no examination is conducted and no document is marked in the enquiry and therefore the entire proceedings are liable to be quashed.

Rule-8 of Regulations 1977 provides the procedure
for imposing major penalties. Sub-regulations (i) and (ii) of Regulation 8 reads as follows:

i. When an employee is charged with misconduct which may lead to the imposition of a major penalty, the disciplinary authority shall frame definite charges on the basis of the allegations against him. The charges together with a statement of the allegations on which they are based, shall be communicated in writing to the employee, who shall be required to submit within such time as may be specified by the disciplinary authority (not exceeding 21 days), a written statement of his defence. A questionnaire in the form appended may also be communicated along with the charge memo with instructions to fill in the same and sent it along with his defence written statement.

ii. On receipt of the written statement of the employee, or if no such statement is received within the time specified, on the expiry of such period, an enquiry may be held by the disciplinary authority itself, or by an officer or committee appointed for the purpose (herein after called the "Enquiry Authority") by the disciplinary authority.

Column-2 of Form-I reads as follows:

"In addition to the written statement of your defence which you are now required to submit, your are entitled to continue your defence by either of the following methods:

a. an oral enquiry held in your presence:

b. to be heard in person without an oral enquiry:

Please state in the columns opposite whether you require either method to be adopted."

The further note on this form indicates that if the delinquent chooses method (a), the following witnesses will be called to prove the charges. Therefore, the option is given to the delinquent whether to hold oral enquiry or to be heard in person without an oral enquiry.

In pursuance of the Annexure-I and the charge memo, the petitioner gave an explanation to the enquiry officer, wherein it is stated that "the questionnaire form is not resubmitted as the same is omitted in the (CC&A) Rules of 1991." Though he

requested to have an enquiry, but at the same time, he has not exercised his option whether to hold enquiry or to hear without an enquiry as per the questionnaire. Therefore, in not examining the witnesses and not marking the documents in the facts and circumstances of the case *ipso facto* do not vitiate the disciplinary proceedings. In this writ petition, the petitioner has not brought to the notice of this Court about the omission of questionnaire form in the CC&A Rules of 1991. The CC & A Rules of 1991 are not made available to this Court. On the other hand, the Regulations 1977 are made available which governs the service conditions of the employees of the respondents-corporation. It is not known how the CC & A Rules of 1991 would applicable to the employees of the respondents-corporation. In the absence of any specific stand or allegation, it cannot be said that Regulations 1977 has no application. Even otherwise, the petitioner is relying upon Regulations 1977 only but not on CC&A Rules of 1991. Regulation-9 provides for the record of the enquiry in such cases, which reads as follows:

> "9. The record of the enquiry in such cases shall include:
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> (i) The charges framed against the employee and the statement of allegations furnished to him under sub-regulation (i) of Regulation 8.
>
> (ii) His written statement of defence, if any.
>
> (iii) The oral and/or documentary evidence, if any, considered in the course of the enquiry, and
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> (iv) The findings on each charge and the reasons therefor."

The word "if any" would clearly indicate that there is no need or obligation on the part of the disciplinary authority to lead any evidence either oral or documentary, unless it is specifically requested by the delinquent in terms of the questionnaire in Form-I. If it is mandatory on the part of the disciplinary authority to conduct oral enquiry so as to lead documentary and oral evidence, the words "if any" would not have been found in Sub-regulation (iii) of Regulation-9. So, non-examination of witnesses and non-marking of documents would not by itself be a ground to throw away the disciplinary proceedings.

Now it is to be seen whether the charges framed against the petitioner are based upon any material or not? The petitioner is working as an Attender in the

respondents-corporation. The allegation is that the petitioner has managed to file filthy and fictitious application for registration of Form-I to the benefit of his illegal dealings and supported sales of seed much, which is a misconduct in discharge of his official duties and engaging himself directly in the business of selling seeds to the reputed firms in the course of his official duties. The reasons given by the disciplinary authority in respect of Charge No. I are basing on the statement of one Mr. V. Govinda Reddy with his own handwriting that he has not applied for plot for registration, for which no explanation is given by the petitioner. The explanation of the writ petitioner is that he helped his
brother-in-law who is an agriculturist and who had purchased the seed in Iza for certification and later sold the same to
M/s. Pravardhan Seeds who has delayed payments to his brother-in-law. When the payment was delayed to his
brother-in- law, the writ petitioner approached the firm and obtained a cheque in his name for Rs.1,75,5000/-. There is absolutely no need for the petitioner to obtain a cheque for huge amount in his name, unless he has connections with
M/s. Pravardhan Seeds. When the brother-in-law of the petitioner is dealing with M/s. Pravardhan Seeds, there is no need for the said Pravardhan Seeds to issue cheque directly in favour of the petitioner. This is a clear misconduct within the meaning of sub-regulation (xxv) of Regulation 4 of Regulations 1977, which reads as follows:

> "Engaging in other employment whilst still in the service of the Agency without prior permission of the authority."

So, basing on the material available on record, the disciplinary authority came to the right conclusion inasmuch as there is a clear material to show that the writ petitioner accepted the cheque in his favour directly and enchased it. The further explanation that the cheque was enchased on behalf of his brother-in-law cannot be accepted.

Though it is stated that the appellate authority has
not considered the appeal, but mechanically passed the order, as seen from the order of the appellate authority, dated
30-12-2000, it is clear that the petitioner has not preferred the appeal within three months as stipulated under Rule 18 (i) (ii) and (iii) of part-IV of Regulations 1977. He preferred the appeal after a lapse of one year and thirty days and therefore, the

appeal was dismissed. As seen from the order of the appellate authority, it is clear that the appeal is dismissed as not preferred within the time and therefore the order under challenge cannot be said to be illegal and arbitrary. After considering the provisions of the Act, the said order has been passed.

Therefore, the writ petition is totally devoid of merit and is accordingly dismissed. In the circumstances, no order as to costs.

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JUSTICE K.C.BHANU

Date: 22-06-2005.

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To

1 The Director, A.P. State Seed Certification Agency,
5-10-193, 1st floor, HACA Bhavan, Hyderabd-500 004.
2 The Senior Seed Certificate Officer, Kurnool, Kurnool District.

3. 2 C.D. copies.